

Including registration or resale numbers from purchasers on Certificates of Resale is the preferred method for documenting that their purchases are purchases for resale. See 86 Ill. Adm. Code 130.1405. (This is a GIL).

August 16, 2001

Dear Xxxxx:

This letter is in response to your correspondence received on July 20, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I work for a leasing company which enters into long term leases of tangible personal property. At the end of the lease term, the Lessee has the option of purchasing the property. If the Lessee declines to purchase, we offer the leased property for sale to third parties.

Oftentimes the property is sold to a wholesaler who sells the type of property in their normal course of business. On occasion, however, the wholesaler buyer is not registered for sales tax purposes in your state, where the equipment is located at time of sale. In those instances, the buyer either picks up the equipment for out of state sale or has it shipped to his out of state location.

In such a case, can we accept your states resale certificate with the wholesaler's out of state sales tax number? Thank you for your assistance.

#### **DEPARTMENT'S RESPONSE:**

##### **ISOLATED OR OCCASIONAL SALES**

Isolated or occasional sales of tangible personal property at retail by persons who do not hold themselves out as being engaged (or who do not habitually engage) in selling such tangible personal property at retail do not constitute engaging in a business of selling such tangible personal property at retail. See the enclosed copy of 86 Ill. Adm. Code 130.110. Such persons do not incur Retailers'

Occupation Tax liability on the gross receipts from such sales. Consequently, the purchasers of that tangible personal property do not incur a Use Tax liability on those purchases. See the enclosed copy of 86 Ill. Adm. Code 150.101. Generally isolated or occasional sales are sales of assets that entities have used and no longer need. The entities must not be in the business of selling these types of assets for the sales to qualify as isolated or occasional sales. Lessors who do not hold themselves out as being engaged in selling the same type of tangible personal property that comes off-lease, generally are considered to be making isolated or occasional sales of that property and would not need to document a sale for resale, since the sale would not be taxable as an occasional sale. Please note that this is not true for persons engaged in the business of leasing or renting motor vehicles who sell those motor vehicles to a purchaser or lessor. See the enclosed copy of 86 Ill. Adm. Code 130.111.

## SALES FOR RESALE

In order to document the fact that a sale is a sale for resale, a retailer is obligated by Illinois to obtain valid a Certificate of Resale from the purchaser. See the enclosed copy of 86 Ill. Adm. Code 130.1405. A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. Provided that this statement is correct, the Department will accept Certificates of Resale as prima facie proof that sales covered thereby were made for resale. In addition to the statement, a Certificate of Resale must contain:

- 1) The seller's name and address;
- 2) the purchaser's name and address;
- 3) a description of the items being purchased for resale;
- 4) purchaser's signature, or the signature of an authorized employee or agent of the purchaser, and date of signing;
- 5) Registration Number, Resale Number, or Certification of Resale to Out-of-State Purchaser
  - A) purchaser's registration number with the Illinois Department of Revenue; or
  - B) purchaser's resale number issued by the Department of Revenue; or
  - C) a statement that the purchaser is an out-of-State purchaser who will sell only to purchasers located outside the State of Illinois. (emphasis added)

Please note that if a purchaser is not required to be registered with the State, then the purchaser can obtain a resale number. Resale numbers are issued to persons who make no taxable sales in Illinois but who need the wherewithal to provide suppliers with Certificates of Resale when purchasing items that will be resold. See the enclosed copy of 86 Ill. Adm. Code 130.1415.

While active registration or resale numbers on Certificates of Resale are still preferred, the Illinois Retailers' Occupation Tax Act provides as follows:

“Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale.

This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale or that a particular sale is a sale for resale." 35 ILCS 120/2c.

As noted above, including registration or resale numbers from purchasers on Certificates of Resale is the preferred method for documenting that their purchases are purchases for resale. However, in light of this statutory language, certifications from purchasers on Certificates of Resale in lieu of resale numbers which state that the purchaser is an out-of-State purchaser who will sell only to purchasers located outside the State of Illinois would generally constitute evidence that this particular sale is a sale for resale despite the fact that no registration number or resale number is provided. The risk run by your company in accepting such a certification and the risk run by the purchaser in providing such a certification is that an Illinois auditor is much more likely to go behind a Certificate of Resale which does not contain a valid resale number and require that more information be provided that the particular sale was, in fact, a sale for resale.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton  
Associate Counsel

TDC:msk  
Enc.